

BORROWER DEFENSE UNIT CLAIMS REVIEW PROTOCOL

GUIDING PRINCIPLES

- Develop and implement an administrative process capable of ensuring supportable and timely decisions
- Achieve consistency among similarly-situated borrowers
- Base decisions on evidence
- Provide relief for harmed borrowers and protect taxpayers

LEGAL FRAMEWORK FOR ELIGIBILITY

- BD application must state a claim under state law:
 - “the borrower may assert as a defense against repayment, any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law.” 34 C.F.R. § 685.206(c).
 - Applicable state law typically is law governing alleged misrepresentations and material omissions made by a school
- Legal threshold for eligibility = preponderance of the evidence
- Must base decisions granting or denying relief on a record sufficient to withstand court scrutiny

REVIEW PROCESS FOR JOB PLACEMENT RATE FINDINGS CLAIMS

- Five steps to determine eligibility under ED's published job placement rate findings:
 1. Verify the claim is complete, noting pertinent missing information for follow up with borrower.
 2. Determine whether borrower attended a covered campus, including reviewing NSLDS data if necessary.
 3. Determine whether borrower attended a covered program, including reviewing the transcript and other documentation to determine whether the borrower attended more than one eligible program.
 4. Confirm the enrollment date is within the covered eligibility period, including reviewing the transcript, NSLDS, and school records if necessary to determine eligibility and the date from which loans should be forgiven.
 5. Verify the borrower signed the form and made the required attestation of reliance.

TRAINING AND QUALITY CONTROL FOR CONTRACTORS

- Training:
 - Full day training by BD Unit, including reviewing several claims with BD Unit attorney.
 - Until contractors demonstrate 100% accuracy, every claim reviewed by another experienced reviewer.
 - Once contractors demonstrate 100% accuracy, statistically significant number of claims spot checked.
 - If significant errors, contractors returned to 100% review of all claims or removed from project.
- Quality Control:
 - Project manager spot checks statistically significant number of all contractor-reviewed claims.
 - BD Unit conducts final QC check to ensure no claim is accidentally processed as an approval.

- Includes making sure all approved claims alleged a placement rate misrepresentation and ensures denied claims are not inadvertently included.

ELIGIBILITY AND RELIEF: SEPARATE DETERMINATIONS

- First – determine eligibility of BD application under the regulation
 - *i.e.*, whether preponderance of the evidence establishes a valid claim under applicable state law
- Second – determine any appropriate relief only for claims determined eligible

DETERMINING ELIGIBILITY: NON-FINDINGS

- Evaluate all available relevant evidence to determine whether preponderance is satisfied:
 - Possible sources of evidence:
 - BD claim
 - Evidence from ED investigations
 - Evidence from other law enforcement investigations
 - Evidence obtained from whistleblower suits
 - Corroborating evidence from other similar BD claims
- Preponderance and thus eligibility is not met when there is a single uncorroborated claim
- Single claim may be denied without further investigation where:
 - Application does not state a claim (*e.g.*, applicant does not identify any misrepresentation actionable under state law); or
 - There is no corroborating evidence of the misrepresentation
 - Consistent with ED's false certification rules
 - Consistent with other agencies deciding benefits claims
- Conduct additional investigation of claim or claims where warranted by size of affected group, ability to develop extrinsic evidence efficiently, and other operational considerations.

EXAMPLE OF ELIGIBILITY DETERMINATION:

Corinthian misrepresented to students at nationally accredited Everest and Wyotech campuses that the credits they earned would be generally transferable to other institutions

- “I was assured when I started that I could transfer my credits to any other school if I chose to do so.”
- “I was told my credits would transfer to University of South Florida for my BA in Finance and they did not so I was stuck with all these loans and no school will take them.”
- “Not a single credit was transferable. I specifically remember asking the rep before enrolling if credits were transferable and she said “absolutely,” never once telling me that accreditation of the school was not the same as a traditional.”
- “The school told me that I would not have any problem transferring credits if I decided to further my education elsewhere.”

Evidence that representation was made:

- Claims are consistent regarding the representation made, include specific details, and are consistent between campuses and over time
- Claims are corroborated by the school’s own internal audits finding substantial failures to provide accurate information regarding the transferability of credits during calls with prospective students, as well as by calls provided by state investigators.

Evidence of falsity:

- Regionally accredited schools, including the in-state institutions where students often sought to transfer, overwhelmingly do not accept credits from nationally accredited schools such as Everest and WyoTech.
- Evidenced by National Center for Education Statistics study; GAO report; the American Association of Collegiate Registrars and Admissions Officers transfer practices guide; a survey of schools conducted by BD unit; as well as numerous student accounts.

Misrepresentation gives “rise to a cause of action against the school under applicable State law.” 34 C.F.R. § 685.206(c):

- Applicable California law prohibits deceptive or misleading representations, including material misrepresentations reasonably relied on by students.
- Misrepresentations about the general transferability of credits earned are highly material to students deciding whether to enroll (and take on debt to do so) and it was reasonable for students to rely on such representations made by school personnel.

RELIEF DETERMINATION

- **Full Relief:** In recognition of the considerable impact a material misrepresentation or omission has on a person's decision to enter a transaction (*e.g.* to take out loans to enroll at a school), many state laws provide for full restitution to restore the person to the status quo.
 - Full relief may be particularly appropriate when a student did not receive a central attribute of the education the student was promised, such as certain programmatic accreditation (*e.g.*, promised ability to sit for law enforcement or nursing exam).
 - All findings claims and non-findings claims approved to date have received full relief.
- **Partial relief:** State law also may recognize an "offset" of the full amount of restitution for the value of goods or services a person subject to a material misrepresentation or omission nonetheless received.
 - An offset may be appropriate where there is substantial value provided by school and the amount of that value can be readily calculated for all eligible students.
 - Note: individualized determinations of value are likely to be administratively burdensome (*e.g.*, determining post-attendance employment outcomes for every student in a large group)

BREAKDOWN OF NON-CCI SCHOOLS WITH BORROWER DEFENSE CLAIMS PENDING

As of February 21, 2017

- **10 Non-CCI Schools with 100+ Claims**
 - EDMC, ITT, DeVry, CEC, Apollo/University of Phoenix, Westwood, ACI, Charlotte School of Law, Globe University/MN School of Business, Graham Holdings/Kaplan University
- **6 Schools with 31-100 Claims**
 - Abry/Marinello School of Beauty, Bridgepoint/Ashford University, ATI Career Training, Anthem, Willis Stein/Kaplan College, Palm Holdings/United Education Institute (UEI)
- **28 Schools with 11-30 Claims**
 - Full Sail University, Strayer, Walden University, Virginia College, Academy of Art University, Grand Canyon University, Medtech, Capella, Fasttrain, Dade Medical College, Fortis College, Star Career Academy, Career Point College, Lincoln Technical Institute, Brown College, Daymar College, Universal Technical Institute, Court Reporting Institute, Mountain State University, Florida Career College, Regency Beauty Institute, Keiser University, Remington College, Wright Career College, Concorde Career College, Jones International University, Masters of Cosmetology College, Salter College
- **797 Schools with 10 or Fewer Claims**